



vehicles (the “Diesel Vehicles”)<sup>1</sup> containing undisclosed software allegedly intended to circumvent federal or state emissions standards.

WHEREAS, on or about August 3, 2016, West Virginia filed its Amended Complaint in the Action.

WHEREAS, West Virginia, Volkswagen and Porsche previously settled the claims alleged by West Virginia as set forth in the Final Consent Judgment and Order entered May 1, 2018.

WHEREAS, West Virginia alleges Bosch engaged in similar conduct with regard to motor vehicles manufactured by FCA US LLC and Fiat Chrysler Automobiles N.V. (collectively Fiat Chrysler) and desires to resolve claims with Bosch regarding vehicles manufactured by Fiat Chrysler.

WHEREAS, West Virginia and Bosch (“Settling Parties”) wish to avoid the expense, uncertainty and inconvenience of further litigation.

WHEREAS, West Virginia, on the one hand, and Bosch (“Settling Defendant”) on the other, now seek entry of a Consent Judgment on the terms set forth herein to settle the Action.

WHEREAS, Bosch has cooperated with West Virginia in this Action, and, since the initiation of this Action, has implemented substantially enhanced compliance policies and procedures applicable to its Powertrain Solutions Division, that (i) prohibit the development or calibration, or assistance to an OEM, as that term is defined in Section II herein, in the development or calibration, of defeat device software in violation of applicable U.S. state and federal laws; (ii) specify when and how Bosch will evaluate software to determine whether it may operate as a defeat device in violation of applicable state and U.S. laws; and (iii) require Bosch to maintain a record of such evaluations.

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<sup>1</sup> The Diesel Vehicles are identified on Exhibit A attached hereto.

WHEREAS, Bosch previously reached a class action settlement agreement between Bosch and private class action plaintiffs in the multidistrict litigation styled as In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation, No. 3:15-md-02672-CRB (N.D. Cal.) (MDL 2672), pursuant to which Bosch made available Two Hundred Seventy-Five Million Five Hundred Thousand dollars (\$275,500,000) to compensate class members.

WHEREAS, Bosch previously reached a class action settlement agreement between Bosch and private class action plaintiffs in the multidistrict litigation styled as In re: Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices and Product Liability Litigation, No. 3:17-md-02777 (N.D. Cal.) (MDL 2777), pursuant to which Bosch made available up to Twenty-Seven Million Five Hundred Thousand dollars (\$27,500,000) to compensate class members.

WHEREAS, Bosch will pay West Virginia an amount which, according to Bosch, represents disgorgement of multiples of Bosch’s profits and more than all of the revenue Bosch realized on the sale of its electronic control units to Volkswagen and Fiat Chrysler for inclusion in the Diesel Vehicles, as defined in Section II below;

WHEREAS, the Settling Parties agree there is no just reason for delay and consent to entry of this Consent Judgment without trial or adjudication of any issue of fact or law.

**NOW, THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED:**

**I. Jurisdiction and Venue**

1. Bosch consents to this Court’s continuing subject matter and personal jurisdiction solely for purposes of entry, enforcement and modification of this Consent Judgment and without waiving their right to contest this Court’s jurisdiction in other matters. This Court retains jurisdiction of the Action for the purpose of enforcing or modifying the terms of this Consent

Judgment, or granting such further relief as the Court deems just and proper. The provisions of this Consent Judgment shall be construed in accordance with the laws of West Virginia.

2. Solely for purposes of entry, enforcement and modification of this Consent Judgment, Bosch consents to venue in this Court and does not waive its right to contest this Court's venue in other matters.

## II. Definitions

3. Capitalized terms used herein shall have the following meanings (in alphabetical order):

a. "Attorney General" means the West Virginia Attorney General's Office.

b. "Auxiliary emission control device" or "AECD" means "any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system." 40 C.F.R. § 86.1803-01.

c. "Bosch" means Robert Bosch GmbH and Robert Bosch LLC, collectively.

d. "Covered Conduct" means any and all acts or omissions, including all communications, occurring up to and including the Effective Date of this Judgment, relating to Bosch's involvement in providing, modifying, developing, calibrating, and/or engineering the emission control systems for the Diesel Vehicles and for its involvement in certifying, promoting, marketing, and/or advertising the Diesel Vehicles.

e. "Defeat Device" means an AECD that reduces the effectiveness of a vehicle's emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless: "(1) Such conditions are substantially included in the Federal emission test procedure; (2) The need for the AECD is justified in terms of protecting the

vehicle against damage or accident; (3) The AECD does not go beyond the requirements of engine starting; or (4) The AECD applies only for emergency vehicles,” 40 C.F.R. § 86.1803-01, or “any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with the Emission Standards for Moving Sources section of the Clean Air Act, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use,” 42 U.S.C. § 7522(a)(3)(B).

f. “Diesel Products” means all Bosch emissions-related software or functions, whether operating individually or in combination with other software or functions, offered, sold or incorporated into diesel-powered motor vehicles that are offered, marketed, sold or leased in the United States or its territories.

g. “Diesel Vehicles” means those Volkswagen and Fiat Chrysler diesel vehicles listed in Exhibit A that were equipped with a Bosch-supplied electronic diesel control unit and that were sold or offered for sale in, leased or offered for lease in, or introduced or delivered for introduction into commerce in West Virginia.

h. “Effective Date” means the date on which this Consent Judgment has been signed by the Parties and entered as an order by the Court.

i. “Environmental Claims” means claims West Virginia asserted or could assert under the Environmental Laws.

j. “Environmental Laws” means any potentially applicable laws and regulations regarding air pollution control from motor vehicles including, without limitation, laws, rules, and/or regulations regarding mobile source emissions, certification, reporting of information,

inspection and maintenance of vehicles and/or anti-tampering provisions, together with related common law and equitable claims.

k. “Knows” or “knowingly” for purposes of Section IV herein, means possessing actual knowledge of relevant information or acting with deliberate ignorance of relevant information.

l. “OEM” means an automotive original equipment manufacturer, including, without limitation, Volkswagen and Fiat Chrysler.

m. “Powertrain Solutions Division” means the division at Bosch named the “Powertrain Solutions” division, which includes the former Gasoline Systems and Diesel Systems divisions, including their former electromobility activities, including any successor unit that in the future takes on the responsibilities of this division for electronic engine control units.

n. “Software” means all emissions-related software prepared by the Powertrain Solutions Division for incorporation into motor vehicles that are offered, marketed, sold, or leased in West Virginia.

o. “UDAP Claims” means claims or potential claims West Virginia asserted or could assert under UDAP Laws.

p. “UDAP Laws” means all potentially applicable state consumer protection and unfair trade and deceptive acts and practices laws, including, without limitation, W. Va. Code §§ 46A-1-101, *et seq.*, as well as related common law and equitable claims.

### **III. Monetary Relief**

4. Without admitting any of the factual or legal allegations in the Amended Complaint, Bosch has agreed to the following relief.

5. Within fifteen (15) business days of entry of this Consent Judgment, Bosch shall pay by wire transfer payable to the State of West Virginia, \$550,000.00 in accordance with written wiring instructions to be separately provided by the Attorney General to Bosch's counsel within five (5) business days after entry of this Consent Judgment.

6. At the discretion of the Attorney General, the payment shall be used by the Attorney General for any one or more of the following purposes: direct and indirect administrative, investigative, compliance, enforcement, or litigation costs and services incurred for consumer protection or antitrust purposes; to be held for appropriation by the Legislature; and/or distribution to taxpayers and/or consumers.

#### **IV. Injunctive Relief**

Except as otherwise stated herein, Bosch, its officers, agents, employees, and attorneys, and all persons in active concert or participation with them, are hereby permanently enjoined, as follows:

7. In its advertising, marketing or promotion to consumers of its Diesel Products, Bosch shall not make any false, misleading or deceptive statements regarding its Diesel Products.

8. Bosch shall not offer, sell or promote Diesel Products or the vehicles in which they are installed when Bosch knows that those Diesel Products contain Defeat Devices in violation of applicable U.S. state and federal laws.

9. Bosch shall not develop, calibrate, or assist an OEM in developing or calibrating any Software feature or function for a Diesel Product when Bosch knows that (a) the Software feature or function, operating alone or in combination with others, operates as a Defeat Device in violation of applicable U.S. state and federal laws; or (b) the OEM intends to use the Software feature or function as a Defeat Device in violation of applicable U.S. state and federal laws.

10. Bosch shall not represent or assist an OEM in representing to any U.S. regulator that a motor vehicle containing a Diesel Product complies with U.S. emissions laws, when Bosch knows that the Diesel Product contains a Defeat Device in violation of applicable U.S. state and federal laws.

11. Bosch shall not knowingly make a materially false statement or conceal a material fact in any document it provides to an OEM, where Bosch knows that the OEM will include such information in a submission to the U.S. Environmental Protection Agency or the California Air Resources Board for purposes of disclosing an AECD.

12. If, following discussions with an OEM pursuant to the policies and procedures in paragraph 13 of this Judgment (the “Policies and Procedures”), Bosch concludes that such OEM has used a Diesel Product in a motor vehicle as a Defeat Device in violation of applicable U.S. state and federal laws or that an OEM has intentionally failed to disclose an AECD contained in a Diesel Product in violation of applicable U.S. state and federal laws, Bosch shall notify the U.S. Environmental Protection Agency and the California Air Resources Board.

13. To help ensure compliance with its obligations in paragraphs 7 through 12, Bosch shall maintain written Policies and Procedures that:

a. prohibit the development, calibration, or provision of assistance to an OEM in the development or calibration of any Software feature or function in a Diesel Product in circumstances when Bosch knows that the Software feature or function, operating alone or in combination with any other Software feature or function in a Diesel Product, operates as a Defeat Device in violation of applicable U.S. state and federal laws;

b. require Bosch to evaluate customer requests made after the Effective Date for new or revised programming of emission-relevant Software features or functions to determine if the

OEM intends to use such features or functions, operating alone or in combination with others, as Defeat Devices in violation of applicable U.S. state and federal laws, including, but not limited to, features or functions that may (1) cause a vehicle's emissions control systems to function differently under normal operating conditions than they perform while the vehicle is undergoing regulatory emissions compliance testing, or (2) optimize emission controls solely under conditions that are present during regulatory emissions compliance testing, and to maintain, for a period of five (5) years, a record of any such determinations;

c. require Bosch to inform an OEM if Bosch has a concern that the OEM has requested that Bosch perform work to program, calibrate, or otherwise implement a Defeat Device in any Software feature or function in violation of applicable U.S. state and federal laws for use in a motor vehicle to be sold, leased, marketed, or offered for sale in the United States, and to discuss the concern with appropriate parties from the OEM prior to completing work on any such feature or function;

d. require approval by at least two employees with sufficient experience and seniority, in consultation with a compliance representative and/or legal representative and, if necessary, a technical expert, prior to completing work on any feature or function for which Bosch informs an OEM pursuant to paragraph 13(c); and

e. require Bosch to protect from retaliation any employee who reports on any issue relating to compliance with the enjoined conduct set forth in Section IV herein and the Policies and Procedures set forth in paragraphs 13(a) through (c) herein and otherwise prohibiting retaliation or toleration of retaliation in any form against any employee for making such a report.

14. Bosch shall maintain a stand-alone compliance department that reports to the company's management board and a compliance organization that, among other things, is

responsible for developing and overseeing training of all relevant Bosch personnel on compliance with corporate Policies and Procedures.

15. Bosch shall require all personnel within its Powertrain Solutions Division who are responsible for Software development to attend training on compliance with the Policies and Procedures.

16. Bosch shall ensure that a compliance office and attorneys are responsible for, among other things, providing its Powertrain Solutions Division with guidance on compliance with the Policies and Procedures and that they are readily available to personnel within the Powertrain Solutions Division.

#### **V. Reporting and Notices**

17. Unless otherwise specified in this Consent Judgment, notices and submissions required by this Consent Judgment shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:

Director  
Consumer Protection & Antitrust Division  
P.O. Box 1789  
Charleston, WV 25326  
[consumer@wvago.gov](mailto:consumer@wvago.gov)

For Bosch:

Sebastian Biedenkopf  
General Counsel, Robert Bosch GmbH  
Robert-Bosch-Platz 1  
70839 Gerlingen-Schillerhöhe  
Germany  
[Sebastian.Biedenkopf@de.bosch.com](mailto:Sebastian.Biedenkopf@de.bosch.com)

## VI. Release

18. Subject to paragraph 20 below, and in consideration of the monetary and non-monetary relief described in Sections III and IV, and upon Bosch's payment of the amount contemplated in paragraph 5, West Virginia releases Bosch, its affiliates and any of Bosch's or its affiliates' former, present or future owners, shareholders, directors, officers, employees, attorneys, parent companies, subsidiaries, predecessors, successors, dealers, agents, assigns, and representatives (collectively, the "Released Parties") from all UDAP Claims arising from or related to the Covered Conduct or to any conduct alleged in the Amended Complaint, including, without limitation, penalties, fines or other monetary payments.

19. Subject to paragraph 20 below, and in consideration of the monetary and non-monetary relief described in Sections III and IV, and upon Bosch's payment of the amount contemplated in paragraph 5, West Virginia releases the Released Parties from all Environmental Claims arising from or related to the Covered Conduct or to any conduct alleged in the Amended Complaint, including, without limitation, penalties, fines or other monetary payments.

20. West Virginia reserves, and this Consent Judgment is without prejudice to, all claims, rights, and remedies against the Released Parties, and Bosch reserves, and this Consent Judgment is without prejudice to, all defenses with respect to all matters not expressly released in paragraph 20 and 21 above, including, without limitation:

- a. any claims arising under West Virginia tax laws;
- b. any claims arising under West Virginia antitrust laws;
- c. any claims arising under West Virginia insurance laws;
- d. any claims arising under West Virginia securities laws;
- e. any criminal liability;

- f. any claims related to any OEM other than Volkswagen or Fiat Chrysler;
- g. any claims unrelated to the Covered Conduct; and
- h. any action to enforce this Consent Judgment and subsequent, related orders or judgments.

## **VII. Miscellaneous**

21. The provisions of this Consent Judgment shall be construed in accordance with the laws of West Virginia.

22. This Consent Judgment is made without trial or adjudication of any issue of fact or law.

23. Nothing in this Consent Judgment shall limit or expand the Attorney General's right to obtain information, documents or testimony from Bosch pursuant to any state or federal law, regulation or rule concerning the claims not released by this Consent Judgment, concerning potential claims against any person or entity other than Bosch, or to evaluate Bosch's compliance with the obligations set forth in this Consent Judgment.

24. Nothing in this Consent Judgment constitutes an agreement by the Attorney General concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any U.S. state tax laws. The Consent Judgment takes no position as to the tax consequences of the Consent Judgment with regard to U.S. federal, state, local, and foreign taxes.

25. Nothing in this Consent Judgment constitutes or shall be construed as an agreement or concession that knowledge or any other state of mind is a required element of any claim brought by the Attorney General against Bosch or any other person or entity.

26. Nothing in this Consent Judgment releases any private rights of action asserted by entities or persons not releasing claims under this Consent Judgment, nor does this Consent Judgment limit any defense available to Bosch in any such action.

27. This Consent Judgment shall be enforceable by the Attorney General.

28. Any failure by any party to this Consent Judgment to insist upon the strict performance by any other party of any of the provisions of this Consent Judgment shall not be deemed a waiver of any of the provisions of this Consent Judgment.

29. This Consent Judgment, which constitutes a continuing obligation, is binding upon the Attorney General, Bosch and any of Bosch's respective successors, assigns or other entities or persons otherwise bound by law.

30. The Parties agree not to challenge the entry of the Consent Judgment and waive all rights of appeal.

31. Consent to this Consent Judgment does not constitute an approval by the Attorney General of Bosch's business acts and practices, and Bosch shall not represent this Consent Judgment as such an approval.

32. Bosch shall not take any action or make any statement denying, directly or indirectly, the propriety of the Consent Judgment by expressing the view that the Consent Judgment or its substance is without factual basis. Nonetheless, Bosch's agreement to entry of this Consent Judgment is not an admission of liability or of any facts alleged in the Consent Judgment or in the Amended Complaint. Bosch is entering into this Consent Judgment solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission, concession, finding, or conclusion of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Bosch expressly denies.

Further, nothing in this Consent Judgment affects Bosch's right to take or adopt any legal or factual position or defense in any other litigation or proceeding, or to cite or enforce the terms of the Release in Section VI.

33. Nothing in this Consent Judgment shall create or give rise to a private right of action of any kind or create any right in a non-party to enforce any aspect of this Consent Judgment or claim any legal or equitable injury for a violation of this Consent Judgment. The exclusive right to enforce any violation or breach of this Consent Judgment shall be with the Parties to this Consent Judgment and the Court.

34. Nothing in this Consent Judgment shall relieve Bosch of its obligation to comply with all U.S. federal, state, and local laws and regulations.

35. Nothing in this Consent Judgment shall be construed to waive any claims of sovereign immunity any party may have in any action or proceeding.

36. If any portion of this Consent Judgment is held illegal, invalid or unenforceable, the remaining terms of this Consent Judgment shall not be affected and shall remain in full force and effect.

37. Bosch shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part in the State of West Virginia that are prohibited by this Consent Judgment or for any other purpose that would otherwise circumvent any term of this Consent Judgment.

38. If West Virginia determines that Bosch made any material misrepresentation or omission relevant to the resolution of this litigation, West Virginia retains the right to seek to either modify or set aside this Consent Judgment.

39. Each of the persons who signs his/her name below affirms that he/she has the authority to execute this Consent Judgment on behalf of the Party whose name appears next to her/his signature and that this Consent Judgment is a binding obligation enforceable against said Party under West Virginia law. The signatory from the West Virginia Attorney's General Office represents that he/she has the authority to execute this Consent Judgment on behalf of West Virginia and that this Consent Judgment is a binding obligation enforceable against West Virginia under West Virginia law.

IT IS SO ORDERED. JUDGMENT is hereby entered in accordance with the foregoing.

IT IS FURTHER ORDERED that this settlement resolves this matter as to all defendants and this matter is dismissed from the active docket of the Court and the Clerk is ordered to mail a certified copy of this Consent Judgment and Order to counsel as addressed below.

By the Court:

  
\_\_\_\_\_  
CHARLES E. KING, JUDGE

Dated: May 11, 2020

**PATRICK MORRISEY**  
Attorney General of West Virginia

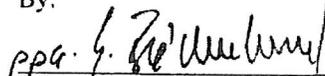
By   
\_\_\_\_\_  
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Assistant Attorney General  
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(304) 558-8986  
douglas.l.davis@wvago.gov  
*Attorney for Plaintiff*

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 11  
DAY OF May, 2020  
  
\_\_\_\_\_  
CATHY S. GATSON, CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA 17

**ROBERT BOSCH GmbH**

Date: 05.03.2020

By:

  
\_\_\_\_\_  
Sebastian Biedenkopf  
General Counsel, Robert Bosch GmbH

  
\_\_\_\_\_  
Martin Reuter  
Vice President Corporate Legal

**ROBERT BOSCH LLC**

Date: \_\_\_\_\_

By:

\_\_\_\_\_  
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**ROBERT BOSCH GmbH**

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By:

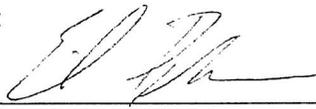
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Sebastian Biedenkopf  
General Counsel, Robert Bosch GmbH

\_\_\_\_\_  
Martin Reuter  
Vice President Corporate Legal

**ROBERT BOSCH LLC**

Date: March 30, 2020

By:

  
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